

## CHAPTER 24

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## Part 1

### Local Services Tax

§ 101. Short Title. This part shall be known and may be cited as the “Clay Township Local Services Tax Ordinance.”

#### § 102. Definitions.

The following words and phrases, when used in this part, shall have the meanings ascribed to them in this section, except where the context or language clearly indicates or requires a different meaning:

- a. Board. The Board of Supervisors of the Township of Clay.
- b. Collector. The person, public employee or private agency designated by Resolution by the Township of Clay to collect and administer the tax herein imposed.
- c. DCED. The Department of Community and Economic Development of the Commonwealth of Pennsylvania.
- d. Earned Income. Compensation as this term is defined in Section 13 [relating to earned income taxes] of the Local Tax Enabling Act, the Act of Dec. 31, 1965, P.L. 1257, § 13, as amended, 53 P.S. § 6913, as amended.
- e. Employer. An individual, partnership, association, limited liability corporation, limited liability partnership, corporation, governmental body, agency or other entity employing one or more persons on a salary, wage, commission or other compensation basis, including a self employed person.
- f. He, His or Him. Indicates the singular and plural number, as well as male, female and neuter genders.
- g. Individual. Any person, male or female, engaged in any business occupation, trade or profession within the corporate limits of the Township of Clay.
- h. Net Profits. The net income from the operation of a business occupation, profession, trade or other activity, as this term is defined in Section 13 [relating to earned income taxes] of the Local Tax Enabling Act, the Act of Dec. 31, 1965, P.L. 1251, § 13, as amended, 53 P.S. § 6913, as amended.
- i. Occupation. Any trade, profession, business or undertaking of any type, kind or character, including services, domestic or other, earned on or performed within the corporate limits of the Township of Clay for which compensation is charged or received; whether by means of salary, wages, commission or fees for services rendered.
- j. Tax. The local services tax at the rate fixed in §103 of this Part.
- k. Tax Year. The period from January 1 until December 31 in any year; a

calendar year.

1. Township. Township of Clay, Lancaster County, Pennsylvania.

§ 103. Levy of Tax.

For specific revenue purposes, an annual tax is hereby levied and assessed, commencing January 1, 2009; upon the privilege of engaging in an occupation with a primary place of employment within the Township during the tax year. Each natural person who exercises such privilege for any length of time during any tax year shall pay the tax for that year in the amount of \$52.00, assessed on a pro rata basis, in accordance with the provisions of this part. This tax may be used solely for the following purposes as the same may be allocated by the Board from time to time: (1) emergency services, which shall include emergency medical services, police services and/or fire services; (2) road construction and/or maintenance; (3) reduction of property taxes; or (4) property tax relief through implementation of a homestead and farmstead exclusion in accordance with 53 Pa.C.S. Ch. 85, Subch. F (relating to homestead property exclusion). Township shall use no less than twenty-five percent of the funds derived from the tax for emergency services. This tax is in addition to all other taxes of any kind or nature heretofore levied by Township. The tax shall be no more than \$52.00 on each person for each calendar year, irrespective of the number of political subdivisions within which a person maybe employed.

§ 104. Exemption and Refunds.

A. Exemption. Any person whose total earned income and net profits from all sources is less than twelve thousand dollars (\$12,000.00) for any calendar year in which the tax is levied is exempt from the payment of the tax for that calendar year. In addition, the following persons are exempt from payment of the tax:

- (1) Any person who has served in any war or armed conflict in which the United States was engaged and is honorably discharged or released under honorable circumstances from active service if, as a result of military service, the person is blind, paraplegic or a double or quadruple amputee or has a service-connected disability declared by the United States Veterans' Administration or its successor to be a total one hundred percent disability.
- (2) Any person who serves as a member of a reserve component of the armed forces and is called to active duty at any time during the taxable year. For the purposes of this subparagraph, "reserve component of the armed forces" shall mean the United States Army Reserve, United States Navy Reserve, United States Marine Corps Reserve, United States Coast Guard Reserve, United States Air Force Reserve, the Pennsylvania Army National Guard or the Pennsylvania Air National Guard.

B. Procedure to Claim Exemption.

- (1) A person seeking to claim an exemption from the local services tax because of income may annually file an exemption certificate with the Township and with the person's employer affirming that the person reasonably expects to receive earned income and net profits from all sources of less than twelve thousand dollars (\$12,000.00) in the calendar year for which the exemption certificate is filed. In the event the Township utilizes a tax collection officer, it shall provide a copy of the exemption certificate to that officer. The exemption certificate shall have attached to

it a copy of all the employee's last pay stubs or W-2 forms from employment for the year prior to the fiscal year for which the employee is requesting to be exempted from the tax. Upon receipt of the exemption certificate and until otherwise instructed by the Township or except as required by clause (2), the employer shall not withhold the tax from the person during the calendar year or the remainder of the calendar year for which the exemption certificate applies, Employers shall ensure that the exemption certificate forms are readily available to employees at all times and shall furnish each new employee with a form at the time of hiring. The exemption certificate form shall be the uniform form provided by the Township.

- (2) With respect to a person who claimed an exemption for a given calendar year from the tax because of income, upon notification to an employer by the person or by the Township that the person has received earned income and net profits from all sources equal to or in excess of twelve thousand dollars (\$12,000) in that calendar year or that the person is otherwise ineligible for the tax exemption for that calendar year, or upon an employer's payment to the person of earned income in an amount equal to or in excess of twelve thousand dollars (\$12,000) in that calendar year, an employer shall withhold the local services tax from the person under clause (3).
- (3) If a person who claimed an exemption for a given calendar year from the tax because of income becomes subject to the tax for the calendar year under clause (2), the employer shall withhold the tax for the remainder of that calendar year. The employer shall withhold from the person, for the first payroll period after receipt of the notification under clause (2), a lump sum equal to the amount of tax that was not withheld from the person due to the exemption claimed by the person under this subsection, plus the per payroll amount due for that first payroll period. The amount of tax withheld per payroll period for the remaining payroll periods in that calendar year shall be the same amount withheld for other employees. In the event the employment of a person subject to withholding of the tax under this clause is subsequently severed in that calendar year, the person shall be liable for any outstanding balance of tax due, and the Township may pursue collection under this part.
- (4) Except as provided in clause (2), it is the intent of this subsection that employers shall not be responsible for investigating exemption certificates, monitoring tax exemption eligibility or exempting any employee from the local services tax.
- (5) Persons requesting exemptions arising under Section 104A.(1)(2) [relating to military service or disability] shall present appropriate proof of the standards described therein to the Township.

C. Refunds. Township, in consultation with the Collector and DCED, shall establish procedures for the processing of refund claims for any tax paid by any person who is eligible for exemption, which procedures shall be in accord with provisions of the general municipal law relating to refunds of overpayments and interest on overpayments. Refunds made within seventy-five days of a refund request or seventy-five days after the last day the employer is required to remit the tax for the last quarter of the calendar year, whichever is later, shall not be subject to interest. No refunds shall be made for amounts overpaid in a calendar year that do

not exceed one dollar (\$1): Township or the Collector shall determine eligibility for exemption and provide refunds to exempt persons.

§ 105. Duty of Employers to Collect.

A. Each employer within the Township, as well as those employers situated outside the Township but who engage in business within the Township, is hereby charged with the duty of collecting the tax from each of his employees engaged by him or performing for him within the Township and making a return and payment thereof to the Collector. Further, each employer is hereby authorized to deduct this tax for each employee in his or her employ, whether said employee is paid by salary, wage or commission and whether or not all such services are performed within the Township.

B. A person subject to the tax shall be assessed by the employer a pro rata share of the tax for each payroll period in which the person is engaging in an occupation. The pro rata share of the tax assessed on the person for a payroll period shall be determined by dividing the rate of the tax levied for the calendar year by the number of payroll periods established by the employer for the calendar year. For purposes of determining the pro rata share, an employer shall round down the amount of the tax collected each payroll period to the nearest one-hundredth of a dollar. Collection of the tax shall be made on a payroll period basis for each payroll period in which the person is engaging in an occupation, except as provided in Paragraph D of this Section, For purposes of this paragraph, combined rate shall mean the aggregate annual rate of the tax levied by the school district and the municipality.

C. No person shall be subject to the payment of the local services tax by more than one political subdivision during each payroll period.

D. In the case of concurrent employment, an employer shall refrain from withholding the tax if the employee provides a recent pay statement from a principal employer that includes the name of the employer, the length of the payroll period and the amount of the tax withheld and a statement from the employee that the pay statement is from the employee's principal employer and the employee will notify other employers of a change in principal place of employment within two weeks of its occurrence. The employee's statement shall be provided on the form approved by DCED.

E. The tax shall be no more than fifty-two dollars (\$52) on each person for each calendar year, irrespective of the number of political subdivisions within which a person maybe employed. The Township shall provide a taxpayer a receipt of payment upon request by the taxpayer.

F. No employer shall be held liable for failure to withhold the tax or for the payment of the withheld tax money to the Township if the failure to withhold taxes arises from incorrect information submitted by the employee as to the employee's place or places of employment, the employee's principal office or where the employee is principally employed. Further, an employer shall not be liable for payment of the local services tax in an amount exceeding the amount withheld by the employer if the employer complies with the provisions of Paragraph B of Section 105 of this Part and this section and remits the amount so withheld in accordance with this Part.

G. Employers shall be required to remit the local services taxes thirty days after the end of each quarter of a calendar year.

§ 106. Returns.

Each employer shall prepare and file a return showing a computation of the tax on forms to be supplied to the employer by the Collector. If an employer fails to file the return and pay the tax, whether or not the employer makes collection thereof from the salary, wages or commissions paid by him or her to an employee, except as provided hereafter in this part, the employer shall be responsible for the payment of the tax in full as though the tax had been originally levied against the employer.

§ 107. Dates for Determining Tax Liability and Payment.

In each tax year, each employer shall use his or her employment records to determine the number of employees from whom such tax shall be deducted and paid over to the Collector on or before the thirtieth day following the end of each calendar quarter of each such tax year.

§ 108. Self-Employed Individuals.

Each self-employed individual who performs services of any type or kind or engages in any occupation or profession within a primary place of employment within the Township shall be required to comply with this part and pay the pro rata portion of the tax due to the Collector on or before the thirtieth day following the end of each quarter.

§ 109. Individuals Engaged in More Than One Occupation or Employed in More Than One Political Subdivision.

A. The situs of the tax shall be the place of employment on the first day the person becomes subject to the tax during each payroll period. In the event a person is engaged in more than one occupation, that is, concurrent employment, or an occupation which requires the person working in more than one political subdivision during a payroll period, the priority of claim to collect the local services tax shall be in the following order:

- (1) First, the political subdivision in which a person maintains his or her principal office or is principally employed;
- (2) Second, the political subdivision in which the person resides and works if the tax is levied by that political subdivision;
- (3) Third, the political subdivision in which a person is employed and which imposes the tax nearest in miles to the person's home.

In case of dispute, a tax receipt of the taxing authority for that calendar year declaring that the taxpayer has made prior payment constitutes prima facie certification of payment to all other political subdivisions.

§ 110. Nonresidents Subject to Tax.

All employers and self-employed individuals residing or having their places of business outside of the Township but who perform services of any type or kind or engage in any occupation or profession within the Township do, by virtue thereof, agree to be bound by and subject themselves to the provisions, penalties and regulations promulgated under this part with the same force and effect as though they were residents of the Township. Further, any individual engaged in an occupation within the Township and an employee of a nonresidential employer may, for the purpose of this part, be considered a self-employed person, and in the event his or her tax is not paid, the Township shall have the option of proceeding against either the employer

or employee for the collection of this tax as hereinafter provided.

§ 111. Administration of Tax.

A. The Collector shall be appointed by Resolution of the Board. It shall be the duty of the Collector to accept and receive payments of this tax and to keep a record thereof showing the amount received by him from each employer of self-employed person, together with the date the tax was received.

B. The Collector is hereby charged with the administration and enforcement of this part and is hereby charged and empowered, subject to Township approval, to proscribe, adopt and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this part, including provisions for the examination of payroll records of any employer subject to this part, the examination and correction of any return made in compliance with this part and any payment alleged or found to be incorrect or as to which overpayment is claimed or found to have occurred. Any person aggrieved by any decision of the Collector shall have the right to appeal consistent with the Local Taxpayers Bill of Rights under Act 50 of 1998.

C. The Collector may request the Board authorize the Collector to examine the books and payroll records of any employer in order to verify the accuracy of any return made by an employer or, if no return was made, to ascertain the tax due. Upon Board Authorization, each employer shall be directed and required to give the Collector the means, facilities and opportunity for such examination.

D. The Board may establish the compensation of the Collector by Resolution.

§ 112. Suits for Collection.

A. In the event that any tax under this part remains due or unpaid 30 days after the due dates above set forth, the Collector, with the Board's approval, may sue for the recovery of any such tax due or unpaid under this part, together with interest and penalty.

B. If for any reason the tax is not paid when due, interest at the rate of 6% on the amount of such tax shall be calculated beginning with the due date of the tax and a penalty of 5% shall be added to the flat rate of such tax for nonpayment thereof. Where suit is brought for the recovery of this tax or other appropriate remedy undertaken, the individual liable therefor shall, in addition, be responsible and liable for the costs of collection, which shall include attorney fees.

§ 113. Violations and Penalties.

Whoever makes any false or untrue statement on any return required by this Part, or whoever refuses inspection of the books, records or accounts in his or her custody and control setting forth the number of employees subject to this tax who are in his or her employment, or whoever fails or refuses to file any return required by this part shall be guilty of a violation and, upon conviction thereof, shall be sentenced to pay a fine of not more than \$600 and costs of prosecution, and, in default of payment of such fine and costs, to imprisonment for not more than 30 days. The action to enforce the penalty herein prescribed may be instituted against any person in charge of the business of any employer who shall have failed or who refuses to file a return required by this part.

§ 114. Interpretation.

A. Nothing contained in this part shall be construed to empower the Township to levy and collect the tax hereby imposed on any occupation not within the taxing power of the Township under the Constitution of the United States and the laws of the Commonwealth of Pennsylvania.

B. If the tax hereby imposed under the provisions of this part shall be held by any court of competent jurisdiction to be in violation of the Constitution of the United States or of the laws of the Commonwealth of Pennsylvania as to any individual, the decision of the court shall not affect or impair the right to impose or collect said tax or the validity of the tax so imposed on other persons or individuals as herein provided.  
[added by Ord. No. 111008, 11/10/08, §1]

Part 2

Earned Income Tax

§201. Short Title. This Part shall be known and may be cited as the Clay Township Earned Income Tax Ordinance. [*Ord. 121399A, 12/13/1999, §1*]

§202. Definitions. All terms defined in Section 13 of the Local Tax Enabling Act, Act of December 31, 1965, P.L. 1257, 53 P.S. § 6913, shall have the meanings set forth therein. The following terms shall have the meanings set forth herein:

- a. Bureau (Lancaster County Tax Collection Bureau). An agency organized and operated by its member school districts to collect, receive, and administer earned income taxes as authorized by resolutions of the various districts and also of municipalities with which it may enter into agency and collection agreements.
- b. Enabling Act. The Local Tax Enabling Act, Act of December 31, 1965, P.L. 1257, 53 P.S. § 6901 et seq., and as may be amended in the future.
- c. Regulations. Regulations duly adopted by the Bureau for the administration of the earned income tax. To the extent provided by law, including but not limited to 1 Pa.C.S.A. § 1937, it is the intention of the Board of Supervisors to incorporate amendments to the Regulations. If a court of competent jurisdiction prohibits such construction, it is the intention of the Board of Supervisors to incorporate the Regulations as they exist on the date of enactment of this Part except as provided in Section 205 (d) herein.
- d. Township. The Township of Clay, County of Lancaster, and Commonwealth of Pennsylvania.

[*Ord. 121399A, 12/13/1999, §2*]

§203. Imposition of Tax. A tax for general revenue purposes, at the rate of one per cent (1%), subject to the maximum rate as permitted under Section 8 of the Enabling Act, is hereby restated an amended on earned income received and net profits earned by individual residents of the Township of Clay during the calendar year 2000 (or taxpayer's fiscal year beginning in said calendar year) and during each year thereafter (on a calendar or taxpayer fiscal year basis), without re-enactment, until this Part shall be repealed or the rate of tax changed.

[*Ord. 121399A, 12/13/1999, §3*]

§204. Returns and Payments by Taxpayers.

- a. Every taxpayer earning net profits or receiving earned income in the current year shall, on or before April 15 of the succeeding year, make and file with the Income Tax Officer a return thereof (on forms, and furnishing information, prescribed by the Income Tax Officer) and pay the tax (or balance thereof after crediting employers' withholding) due thereon.
- b. Further details concerning taxpayers' payment and making returns of tax levied by this Part are set forth in the Regulations. If required in the Regulations, taxpayers shall file a declaration of estimated net profits and

pay the tax due thereon and shall file quarterly returns of earned income and pay the tax due thereon.

[Ord. 121399A, 12/13/1999, §4]

§205. Employers' Collection at Source: Commission.

- a. As authorized in Section 10 of the Enabling Act, the Township has entered into a joint agreement with other political subdivisions for collection of the tax by the Bureau, and has included in this Part provisions as deemed necessary for collection of the tax. Every employer with a place of business within this Township, or within the jurisdiction of the Bureau as defined in the Regulations, is required to register, to deduct tax from earned income of employees subject to the tax within the jurisdiction of the Bureau, to file quarterly reports and make remittances, and to do other acts as fully set forth in Section 13 (IV) of the Enabling Act.
- b. Any employer who has no place of business in this Township, or within the jurisdiction of the Bureau as defined in the Regulations, but who desires, for the convenience of his employees residing within the Township, to deduct tax hereunder from such employees' wages, shall become subject to all obligations of timely filing of returns, reports and remittances, and of maintaining and disclosing records, and to all interest and penalties with respect to such tax as he may actually deduct, in all respects, and with the same incidents, as though he were a resident employer.
- c. Tax deducted from wages by an employer shall at all times be and remain the property of this Township, and shall constitute a trust fund in the employer's hands until remitted to the Income Tax Officer; and deduction of tax from wages shall, as between the employee and this Township, constitute payment of the tax by the employee, regardless of any insolvency or failure to remit on the employer's part.
- d. If and to the extent provided in the Regulations, every employer who shall deduct tax from wages, and remit it, may deduct from each such remittance a commission, not to exceed two percent (2%), or any lesser amount provided in the Regulations, of the tax withheld. The Township expressly authorizes the Bureau to amend the Regulations to decrease or eliminate such commission.

[Ord. 121399A, 12/13/1999, §5]

§206. Income Tax Officer. This Township hereby designates Lancaster County Tax Collection Bureau (an unincorporated agency organized and operated jointly by the school districts of Lancaster County) as its Income Tax Officer to perform all the duties, be subject to all the requirements, and have all the powers prescribed by Section 13 (V) of the Enabling Act. Said Bureau shall receive such compensation for its services as it and this Township may agree from time to time. The Township expressly authorizes the Bureau to promulgate and amend the Regulations. [Ord. 121399A, 12/13/1999, §6]

§207. Suit for Collection of Tax; Interest and Penalties: Incorporation of all Present and Future Enabling Act Provisions.

- a. Suits for collection of tax are hereby authorized, and interest and penalties shall be imposed, as provided in Section 13 (VII) and (VIII) of the Enabling Act.
- b. Notwithstanding prior mention in this Part, for convenience, of reference only, of specific sub-sections of Section 13 of the Enabling Act, all provisions of the entire Section 13 of the Enabling Act are hereby incorporated into this Part by this reference, as required by the Enabling Act. Any provisions which any future supplements to or amendments of the Enabling Act may require to be included in or construed to be a part of any tax on earned income or net profits, or of the part levying the same, shall automatically become a part of this Part upon the effective date of such supplement or amendment, without the need for formal amendment of this Part by the Board of Supervisors of the Township of Clay to the maximum extent authorized by 1 Pa.,C.S.A. § 1937.

[Ord. 121399A, 12/13/1999, §7]

§208. Deductions, Losses, Exemption for Persons Under Age 16.

- a. Employee's Unreimbursed Business Expenses. Business expenses are as set forth in the Regulations.
- b. Losses. Losses are as set forth in the Regulations.
- c. Persons Under 16 Years of Age. This Board of Supervisors finds (1) that minors of various age groups have traditionally, and with Judicial sanction, been considered as comprising separate classes for many legislative purposes, and (2) that minors under the age of sixteen years are for the most part unemancipated and subject to compulsory school attendance and child labor laws, and therefore for the most part so lacking in power to earn and to have legal control of money or property that enforcement of reporting and collection of tax hereunder against them would yield inconsequential amounts and would be unduly difficult, expensive, and not in the public interest; and therefore persons under the age of sixteen years are hereby exempted from all liability for tax under this Part.

[Ord. 121399A, 12/13/1999, §8]

§209. Continuity: Non-applicability: Severability.

- a. The tax levied by this Part imposes the same tax without substantial change as imposed in previous years, and shall be so interpreted.
- b. This Part shall not apply to any person or property as to whom or which it is beyond the legal power of this Township to impose any tax or duty herein provided for.
- c. If any section, clause, sentence, or part of this Part is for any reason judicially determined to be unconstitutional, illegal or invalid such determination shall not affect or impair any of the remaining sections, clauses, sentences or parts hereof; and it is hereby declared to be the intent

of the Board of Supervisors of this Township that this Part would have been adopted even if such unconstitutional illegal or invalid portion/s had not been included herein.

*[Ord. 121399A, 12/13/1999, §9]*

§210. Repealer. The provisions of this Part so far as they are the same as ordinances in force immediately prior to the enactment of this Part, including but not limited to Ordinance No. 020899 as amended, (see Key) are intended as a continuation of such Ordinance and not as a new enactment. In the even that this Part is declared invalid, Ordinance No. 020899 and any other ordinances of the Township levying an earned income tax shall remain in full force and effect and shall not be affected in any manner by enactment of this Part. The provisions of this Part shall not affect any act done or liability incurred, not shall they affect any suit or prosecution pending or to be instituted to enforce any right or penalty or to punish any offense under the authority of any Ordinance in effect prior to the enactment of this Part. Subject to the foregoing provisions of this Section, this Part shall supersede, replace and repeal ordinances levying an earned income tax, including but not limited to Ordinance No. 020899, in force immediately prior to the effective date of this Part.*[Ord. 121399A, 12/13/1999, §10]*

§211. Effective Date. This Part shall become effective as provided by law. To the extent that this Part amends imposition, collection, or any other matter relating to the earned income tax as reenacted by this Part, such revised provisions shall become effective January 1, 2000. *[Ord. 121399A, 12/13/1999, §11]*